



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 14.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (PD) (MD) No.1137 of 2018
and C.M.P. (MD) No.4865 of 2018

1. Ganesan
2. Gunasekaran
3. Rajasekaran
4. Devi

... Petitioners/Petitioners/Defendants 2,4,5,6

-vs-

1. Kannan
2. Saravanan
3. Sakthivel
4. Jeyendra

... Respondent 1 to 4/Respondent 1 to 4/Plaintiffs

5. Nagarajan
6. Seenivasan Konar
7. Namasivayam

... Respondent 5 to 7/Respondent 5 to 7/
Defendants 1,3,7

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the order passed in I.A.No.56 of 2018 in O.S.No.127 of 2018 on the file of the Hon'ble Sub Court, Pattukkottai dated 02.03.2018 by allowing this Revision Petition and issue appropriate orders, as this Hon'ble Court may deem fit and proper under the circumstances of the case.

For Petitioner : Mr.K.K.Ramakrishnan
For R3 & R4 : Mr.S.Deenadhayan

O R D E R

The revision petitioners are the defendants 2 and 4 to 6 in O.S.No.127 of 2018 on the file of the Sub Court, Pattukkottai and in the suit, the plaintiffs sought for declaration, etc. During pendency of the suit, the petitioners / Defendants 2,4,5,6 filed an application in I.A.No.56 of 2018, seeking to reopen the case in O.S.No.127 of 2018 for examination of witnesses as per the memo filed along with the petition and the said application was dismissed by the Trial Court, stating that the petitioners had not taken any steps on earlier occasion for examination of the witnesses and therefore, this is not a fit case for reopening at this stage. Aggrieved by the said order, the petitioners are before this Court.

2. Heard the learned counsel for the petitioners and the learned counsel for R3 & R4 and the notice to other side is dispensed with, in view of the nature of disposal of this case.



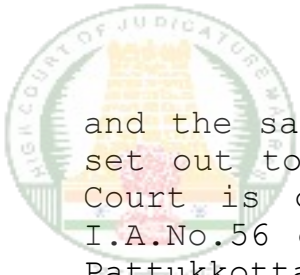
3. It is the case of the revision petitioners that the plaintiffs, after completion of their argument on 21.11.2017, had suddenly changed their Advocate and made objection to the Will written by the father of the 1st petitioner in respect of the petitioners 5 & 6, stating that the Will was not duly proved. It is the further case of the petitioners that since the concerned witnesses had settled somewhere else on account of their age factor, it is impossible for the petitioners to bring them to the witness box.

4. The revision petitioners state that unless they are examined, the real truth will not come out with respect to the execution of the Will, as they only witnessed the said Will and grave prejudice will be caused in the event of disallowing the plea of the petitioners. The revision petitioners further state that the balance of convenience is in their favour and no prejudice will be caused to other side for reopening the case for the afore-stated purpose.

5. Learned counsel for the respondents 3 & 4 has contended that burden is on the side of the defendants to prove the execution of the Will and after ascertaining the fact that the suit was not legally contested by them in respect of the Will, in order to rectify the same, the petitioners have taken such steps in the guise of reopening of the case and the revision petitioners have some how wanted to succeed in the matter. It is further contended that the averments stated in the affidavit are not sufficient for consideration of the present case for reopen. Hence, it is prayed that this petition is liable to be dismissed in limine.

6. From the perusal of the averments set out in the petition, it is seen that during the course of argument before the Trial Court, the plaintiffs put forth the contention that the Will dated 07.12.1995 was not proved factually and to fill up the said lacuna, the petitioners immediately filed the application, seeking to reopen the case, which is legally not sustainable. Further, it was stated by the petitioners themselves that the witnesses to the Will are aged persons and therefore, no purpose would be served in calling them for evidence. It is to be noted that the 2nd witness to the Will is the 2nd plaintiff in the suit and the petitioners indirectly wanted to defend their case through examination of the 2nd plaintiff through Court, which is not permissible.

7. It is the own admission of the petitioners themselves, as could be seen from Paragraph No.4 of the affidavit filed in I.A.No.56 of 2018 that because of the plea taken by the plaintiffs that the contents of the Will was not duly established, the petitioners have no other option, but to prove it by examining the witness to the Will. Therefore, it could be inferred that the petitioners would have failed to substantiate their contention by relying upon the Will, on account of which, they have adopted the new tactics of reopening of the case so as to examine the witnesses



and the said act of the petitioners is depreciable and the defence set out to that effect is liable to be brushed aside. Hence, this Court is of the view that the order dated 02.03.2018 passed in I.A.No.56 of 2018 in O.S.No.127 of 2018 by the learned Sub Judge, Pattukkottai does not warrant any interference by this Court.

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8. In the result,

a) this civil revision petition is dismissed, by confirming the order dated 02.03.2018 passed in I.A.No.56 of 2018 in O.S.No.127 of 2018 by the learned Sub Judge, Pattukkottai;

b) the learned Sub Judge, Pattukkottai is directed to conduct the trial of the case in O.S.No.127 of 2018 on day-to-day basis and dispose of the same within a period of two months from the date of receipt of a copy of this order, without giving any unnecessary adjournment to either parties and the parties shall also cooperate for early disposal of the suit within the stipulated period prescribed above.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar(CS-I)

To:

The Sub Judge, Pattukkottai.

+1cc to M/S.K.K.Ramakrishnan, Advocate SR.No. 68173

C.R.P. (PD) (MD) No.1137 of 2018
14.06.2018

ar

JM/SKN RSK/SAR 1/11.08.2018/3P/3C